

302 KAR 36:010. Disputed claims to bond, certificate of deposit and irrevocable letter of credit proceeds.

RELATES TO: KRS 251.440, 251.451, 251.720

STATUTORY AUTHORITY: KRS 251.700

NECESSITY, FUNCTION, AND CONFORMITY: To define and clarify the procedure for settlement of disputed claims to the proceeds of grain storage and grain dealer bonds, certificates of deposit or irrevocable letters of credit.

Section 1. Following the failure of a grain dealer or grain warehouseman the Director, Division of Weights and Measures, shall determine the claims and amounts thereof to be made against the proceeds of a grain warehouseman or grain dealer bond, certificate of deposit or irrevocable letter of credit. Such bond, certificate of deposit or irrevocable letter of credit shall first be applied to pay those individuals whom the director determines to be valid claimants. Such claimants shall be paid on a pro rata basis determined by the director if there are insufficient proceeds to reimburse claimants 100 percent. If proceeds of the bond, certificate of deposit, and/or irrevocable letter of credit remain after reimbursing all claimants 100 percent, the remaining proceeds shall be used to reimburse the Kentucky Grain Insurance Fund for any amounts paid from the fund.

Section 2. The director shall, after determining claims and amounts thereof, send notice to all claimants of the amount to be paid to that claimant and shall give the claimant ten (10) days in which to respond if the claimant does not agree with the figure he is to be paid.

Section 3. If a claim is disputed or if a claimant disagrees with the amount he is to be paid or his entitlement to a portion of the proceeds of the bond, certificate of deposit or irrevocable letter of credit and has requested further consideration of his claim, and if such request has been received by the director within the requisite ten (10) day period, the director shall forward the information concerning the claim, including all associated documents, to the commissioner or his designee to review the claim and make a final determination thereon. The director shall notify the potential claimant, in writing, that a final review of his claim has been scheduled and shall notify the potential claimant of the time and place of such review. At such time and place as has been designated the potential claimant may appear with or without counsel and a review of the claim shall be made. The potential claimant may present such information as he may have at that time and the director may likewise present such information as he has. At the request of the potential claimant, the director or the commissioner, a tape recording or transcript of the conference shall be made. Following the conference and within fifteen (15) days, the commissioner or his designee shall make a written determination concerning the claim and shall provide a copy of the determination to the Director, Division of Weights and Measures, and to the potential claimant. Within seven (7) days of the conference the commissioner shall issue a proposed determination concerning the claim. Within five (5) days of the proposed determination either the director or the potential claimant may file exceptions to the proposed determination.

Section 4. The commissioner or his designee shall review the entire record, including any exceptions thereto and shall issue a final order allowing, disallowing or modifying the claim and its amount within fifteen (15) days from the date of the conference.

Section 5. A copy of the final order shall be sent to the Director, Division of Weights and Measures, and the potential claimant. The order of the commissioner shall constitute final action by the department. Either the director or the potential claimant may appeal the final order of the com-

missioner to Franklin Circuit Court within thirty (30) days of the order.

Section 6. Failure to appear at the potential claimant's review or failure to timely request a review of a previously determined claim within the prescribed time period, shall be grounds for the commissioner ordering the claim to remain as originally determined by the director. (14 Ky.R. 1542; eff. 2-8-88.)